

Judge Thomas S. Zilly

FILED  
LODGED  
ENTERED  
RECEIVED

JUL 29 2004

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
BY WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES ROBERT MURPHY,

Defendant.

NO. CR04-163Z

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Kathryn A. Warma, Assistant United States Attorney for said District, and the defendant, JAMES ROBERT MURPHY, and his attorney, Omodare Jupiter, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C):

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Indictment. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document.

a. Use of a Telecommunications Device in Interstate Communications with Intent to Annoy, Abuse, Threaten or Harass, as charged in Counts 13 and 15, in violation of Title 47, United States Code, Section 223(a)(1)(C).

1 Defendant further understands that before entering his plea of guilty, Defendant  
2 will be placed under oath. Any statement given by Defendant under oath may be used by  
3 the government in a prosecution for perjury or false statement.  
4

5 2. Elements of the Offense.

6 a. The elements of the offense of Use of a Telecommunications Device  
7 in Interstate Communications with Intent to Annoy, Abuse, Threaten or Harass, as charged  
8 in Counts 13 and 15, in violation of Title 47, United States Code, Section 223(a)(1)(C), are  
9 as follows:

10 First, Defendant used a telecommunications device in interstate  
11 communications, whether or not conversation or communication ensued;

12 Second, Defendant did so without disclosing his identity; and

13 Third, Defendant did so with the intent to annoy, abuse, threaten or  
14 harass any person who received the communication.  
15

16 3. The Penalties. Defendant understands that the statutory penalties for the  
17 offense to which he is entering pleas of guilty are as follows:

18 a. Use of a Telecommunications Device in Interstate Communications  
19 with Intent to Annoy, Abuse, Threaten and Harass

20 1) imprisonment for up to two (2) years;

21 2) a fine of up to two hundred fifty thousand dollars  
22 (\$250,000.00);

23 3) a period of supervision following release from prison of up to  
24 one (1) year;

25 4) a term of probation for up to five (5) years; and

26 5) a one hundred dollar (\$100.00) penalty assessment per count,  
27 (totaling \$200.00), which assessment Defendant agrees shall  
28 be paid at or before the time of sentencing.

1 Defendant understands that in addition to any term of imprisonment and/or  
2 fine that is imposed, the Court may order Defendant to pay restitution to any victim of the  
3 offense, as required by law.

4 Defendant agrees that any monetary penalty the Court imposes, including the  
5 special assessment, fine, costs or restitution, is due and payable immediately, and further  
6 agrees to submit a completed Financial Statement of Debtor form as requested by the  
7 United States Attorney's Office.

8 Defendant understands that supervised release is a period of time following  
9 imprisonment during which he will be subject to certain restrictions and requirements.  
10 Defendant further understands that if supervised release is imposed and he violates one or  
11 more of its conditions, he could be returned to prison for all or part of the term of  
12 supervised release that was originally imposed. This could result in Defendant serving a  
13 total term of imprisonment greater than the statutory maximum stated above.

14  
15 4. Rights Waived by Pleading Guilty. Defendant understands that, by pleading  
16 guilty, he knowingly and voluntarily waives the following rights:

17 a. The right to plead not guilty, and to persist in a plea of not guilty;

18 b. The right to a speedy and public trial before a jury of Defendant's  
19 peers;

20 c. The right to the effective assistance of counsel at trial, including, if  
21 Defendant could not afford an attorney, the right to have the Court appoint one for  
22 Defendant;

23 d. The right to be presumed innocent until guilt has been established at  
24 trial, beyond a reasonable doubt;

25 e. The right at trial to confront and cross-examine witnesses against  
26 Defendant;

27 f. The right at trial to compel or subpoena witnesses to appear on  
28 Defendant's behalf;

1           g.     The right to testify or to remain silent at trial, at which trial such  
2 silence could not be used against Defendant;

3           h.     The right to appeal a finding of guilt or any pretrial rulings; and

4           i.     The right, to the extent required by law, to have sentencing factors  
5 charged in the Indictment or determined by a jury beyond a  
6 reasonable doubt.

7  
8           5.     United States Sentencing Guidelines. Defendant understands and  
9 acknowledges that, absent applicable intervening law:

10           a.     The United States Sentencing Guidelines, promulgated by the  
11 United States Sentencing Commission, are applicable to this case;

12           b.     The Court will determine Defendant's applicable Sentencing  
13 Guidelines range at the time of sentencing;

14           c.     Except as provided in paragraph 8 below, Sentencing, Defendant may  
15 not withdraw a guilty plea solely because of the sentence imposed by the Court.

16  
17           6.     Ultimate Sentence. Defendant acknowledges that no one has promised or  
18 guaranteed what sentence the Court will impose.

19  
20           7.     Statement of Facts. The parties agree on the following facts in support of  
21 Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged  
22 offenses and expressly waives any right to have these facts determined by a jury beyond a  
23 reasonable doubt.

24           a.     JAMES ROBERT MURPHY had a sporadic romantic relationship  
25 with a woman named Joelle Ligon, during the period from 1984 through 1990.

26           b.     By 2002, Ligon had taken up residence in the State of Washington,  
27 and secured employment with the City of Seattle, as a Public Relations Specialist with the  
28 Seattle Parks Department. By no later than May of 2002, JAMES ROBERT MURPHY

1 successfully obtained her e-mail address at her place of employment. By no later than  
2 May 30, 2002, MURPHY began transmitting uninvited and harassing e-mail messages to  
3 Ligon, addressing them to her workplace computer at the City of Seattle Parks  
4 Department. MURPHY initiated the harassing e-mail communications from his computer  
5 in South Carolina, and transmitted them through interstate communications via the  
6 Internet, to Ligon's workplace computer in Seattle, Washington.

7 c. During the period from May 30, 2002, through and until April 10,  
8 2003, JAMES ROBERT MURPHY used his computer in South Carolina to initiate and  
9 transmit through interstate communications via the Internet dozens of e-mail, and also  
10 facsimile ("fax") messages, to Ligon and to other employees of the City of Seattle, without  
11 disclosing his identity, and with the intent to annoy, abuse, threaten or harass Joelle Ligon.  
12 Although Ligon initially deleted the communications that she received from MURPHY  
13 upon receipt, she ultimately began to save and copy, and thereby preserve the messages.  
14 Copies of 26 communications transmitted electronically and through interstate  
15 communications by JAMES ROBERT MURPHY to Ligon and, in some cases, to other  
16 Seattle City employees, are attached as Exhibits 1 - 26.

17 d. JAMES ROBERT MURPHY acted affirmatively and intentionally to  
18 disguise his identity as the originator and sender of all of the 26 communications appended  
19 as Exhibits 1 - 26 in at least two different ways. One technique used by MURPHY was to  
20 insert a false name as ("spoof") the identity of the purported "sender" of the  
21 communication. For example, MURPHY acted to make one of the messages appear to  
22 have been sent by "Bishop Sanders," from "[bsanders@seattlecatholic.org](mailto:bsanders@seattlecatholic.org)" (Exhibit 22).  
23 A second technique MURPHY used to disguise his identity as the originator and sender of  
24 the subject messages was to utilize Internet "anonymizing" services that MURPHY  
25 believed would relay or forward his communications while eliminating or "stripping"  
26 information identifying the originating computer. JAMES ROBERT MURPHY sought  
27 and intended by these means to avoid identification as the person who had used a  
28

1 computer to generate and transmit the messages that he sent with the intention of  
2 annoying, abusing, threatening or harassing the recipient/s thereof.

3 e. JAMES ROBERT MURPHY also acted affirmatively and  
4 intentionally to craft misleading "subject" descriptions for many of the annoying, abusive,  
5 threatening or harassing communications; titling messages, for example, with "subjects"  
6 such as "raw sewage in Denny Park," "park sanitation," or "important information about  
7 ice rink," which would indicate the message related to a Seattle Parks Department issue,  
8 when in fact, the communications had no relationship to Seattle Parks Department issues,  
9 but were instead intended only to annoy, abuse, threaten or harass the recipient of the  
10 messages (Exhibits 5, 6, 20). MURPHY "titled" another message, "Analisa wanted you to  
11 see this," with the knowledge that "Analisa" was the name of Joelle Ligon's sister, and  
12 with the intention that use of Ligon's sister's name in the "subject" title would entice  
13 Ligon to open and read the communication that MURPHY had transmitted with the  
14 intention to annoy, abuse, threaten or harass Ligon, as the recipient (Exhibit 13).

15 f. Included among the dozens of electronic communications JAMES  
16 ROBERT MURPHY transmitted, from his computer in South Carolina through interstate  
17 communications via the Internet, to Seattle, Washington, without disclosing his identity  
18 and with the intent to annoy, abuse, threaten or harass, were the following:

19 1) On or about August 28, 2002, JAMES ROBERT MURPHY, who  
20 was then present in South Carolina, used a computer and the Internet to send an e-mail  
21 message to Joelle Ligon, which message was received by her on a computer at the place of  
22 her employment in Seattle, Washington; which message was purportedly sent to Ligon by  
23 a "sender" falsely identified by MURPHY as "Adam Mada"; which message had as its  
24 stated subject, "Analisa wanted you to see this"; and which message was intended by  
25 JAMES ROBERT MURPHY to annoy, abuse, threaten or harass the person who received  
26 the communication. (Exhibit 13).

27 2) On or about September 13, 2002, JAMES ROBERT MURPHY,  
28 who was then present in South Carolina, used a computer and the Internet to send an e-

1 mail message to Joelle Ligon, as well as to ten other individuals employed by the City of  
2 Seattle, which message was received by Ligon and others on computers at the place of  
3 their employment in Seattle, Washington; which message was purportedly sent by a  
4 "sender" falsely identified by MURPHY as "James Maidson"; which message had as its  
5 stated subject, "Concerning your employee Joelle Ligon"; and which message was  
6 intended by JAMES ROBERT MURPHY to annoy, abuse, threaten or harass the person/s  
7 who received the communication. (Exhibit 15).

8 g. Joelle Ligon did not invite or welcome any of the dozens of electronic  
9 communications JAMES ROBERT MURPHY transmitted to her and to other employees  
10 of the City of Seattle. Although Joelle Ligon suspected that JAMES ROBERT MURPHY  
11 was responsible, the identity of the sender/s was disguised. Joelle Ligon could, therefore,  
12 testify that she did not know if any one individual, or even a group of individuals, was  
13 targeting her. The communications transmitted by JAMES ROBERT MURPHY to Joelle  
14 Ligon at her workplace in the City of Seattle had the effect of annoying, abusing,  
15 threatening and/or harassing her. The effect upon Joelle Ligon was to instill within her  
16 fear for her personal safety, and fear of the consequences on her continued or future  
17 employment.

18 h. After having received dozens of annoying, abusive, threatening and  
19 harassing email communications over a period of almost one year, Joelle Ligon applied to  
20 the Superior Court of Washington for King County for a Protection Order in April of  
21 2003, seeking to restrain JAMES ROBERT MURPHY from making "any attempts to  
22 contact" her. On May 12, 2003, a detective with the Hanahan, South Carolina Police  
23 Department served the Petition for Protection Order and Temporary Order for Protection  
24 and Notice of Hearing on JAMES ROBERT MURPHY, at his residence in Hanahan,  
25 South Carolina. (Exhibit 27). After he was served with the Petition and Temporary Order  
26 for Protection on May 12, 2003, JAMES ROBERT MURPHY immediately violated the  
27 terms of the Temporary Order for Protection by sending an e-mail communication to Joelle  
28 Ligon, addressed to her workplace e-mail, in which he stated (falsely) that he had not sent

1 the harassing communications that were the basis for the Temporary Protection Order, and  
2 “strongly suggest[ed] [she] look elsewhere for the bad guy.” (Exhibit 28). This was the  
3 last communication that JAMES ROBERT MURPHY sent to Joelle Ligon.

4 i. On May 14, 2003, JAMES ROBERT MURPHY, without counsel,  
5 faxed a letter to the Clerk of the Court, King County Superior Court, in which he also  
6 (falsely) denied that he had sent harassing communications to Joelle Ligon, and that “Ms.  
7 Ligon’s assertions that [he was] somehow behind the harassment she alleges to have  
8 experienced are baseless and absurd.” (Exhibit 29).

9 j. On April 9, 2004, JAMES ROBERT MURPHY was arrested by  
10 agents of the Federal Bureau of Investigation. After advisement of his Miranda rights,  
11 MURPHY agreed to waive those rights, and admitted that he had used a computer to send  
12 dozens of e-mail or fax messages to Ligon in Seattle, Washington.

13 k. JAMES ROBERT MURPHY did use a telecommunications device,  
14 namely, his personal computer in South Carolina, to transmit through interstate  
15 communications via the Internet, to Seattle, Washington, communications to persons  
16 without disclosing his identity and with the intent to annoy, abuse, threaten or harass the  
17 recipient thereof, on each of the 26 occasions specified in Counts 1 - 26 of the Indictment  
18 in Case No. CR04-163Z.

19  
20 8. Sentencing. Pursuant to Rule 11(c)(1)(C) of the Federal  
21 Rules of Criminal Procedure, the parties acknowledge and agree that the appropriate  
22 sentence to be imposed by the Court at the time of sentencing is a term of probation within  
23 the range of from thirty-six (36) to sixty (60) months. If the sentencing court does not  
24 adopt the agreement of the parties and imposes a sentence outside the agreed upon range,  
25 both the defendant and the United States reserve the right to withdraw from this agreement  
26 pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure and to proceed to  
27 trial. No other agreement has been made with regard to the imposition of the sentence in  
28



1 | this matter, and the parties understand that the Court retains full discretion to impose a  
2 | sentence within the range agreed to above.

3 |  
4 | 9. Restitution. Defendant shall make restitution to the victims and in the  
5 | amount ordered by the Court after hearing arguments. Said amount shall be due and  
6 | payable immediately and shall be paid in accordance with a schedule of payments as set by  
7 | the United States Probation Office and ordered by the Court.

8 |  
9 | 10. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,  
10 | the United States Attorney's Office for the Western District of Washington agrees further,  
11 | not to prosecute Defendant for any additional offenses known to it as of the time of this  
12 | Agreement that are based upon evidence in its possession at this time, or that arise out of  
13 | the conduct giving rise to this investigation. In this regard, Defendant recognizes that the  
14 | United States has agreed not to prosecute all of the criminal charges that the evidence  
15 | establishes were committed by Defendant solely because of the promises made by  
16 | Defendant in this Agreement. Defendant acknowledges and agrees, however, that for  
17 | purposes of preparing the Presentence Report, the United States Attorney's Office will  
18 | provide the United States Probation Office with evidence of all relevant conduct  
19 | committed by Defendant.

20 | Pursuant to this Plea Agreement, and conditioned on Defendant's fulfillment  
21 | of all of its conditions, the United States agrees to move the Court, at the time of  
22 | sentencing, to dismiss without prejudice as to Defendant Counts 1-12, 14, 16-26 of the  
23 | Indictment in No. CR04-163Z. Defendant agrees that, if the conviction is later dismissed  
24 | or vacated, the dismissed counts of the Indictment in No. CR04-163Z may be reinstated.

25 | Defendant agrees and acknowledges that any charges to be dismissed before  
26 | or at the time of sentencing were substantially justified in light of the evidence available to  
27 | the United States, were not vexatious, frivolous or taken in bad faith, and do not provide  
28 |

1 Defendant with a basis for any future claims under the "Hyde Amendment," Pub.L. No.  
2 105-119 (1997).

3  
4 11. Acceptance of Responsibility. The United States acknowledges that  
5 Defendant has assisted the United States by timely notifying the authorities of his intention  
6 to plead guilty, thereby permitting the United States to avoid preparing for trial and  
7 permitting the Court to allocate its resources efficiently. If at the time of sentencing, the  
8 United States remains satisfied that Defendant has accepted responsibility, then it will  
9 recommend a sentence that takes this acceptance of responsibility into consideration.  
10 Defendant understands and agrees that the United States will base its recommendation on  
11 factors set forth in the United States Sentencing Guidelines, including Section 3E1.1.

12  
13 12. Voluntariness of Plea. Defendant acknowledges that he has entered into this  
14 Plea Agreement freely and voluntarily, and that no threats or promises, other than the  
15 promises contained in this Plea Agreement, were made to induce Defendant to enter this  
16 plea of guilty.

17  
18 13. Statute of Limitations. In the event that this Agreement is not accepted by  
19 the Court for any reason, or Defendant has breached any of the terms of this Plea  
20 Agreement, the statute of limitations shall be deemed to have been tolled from the date of  
21 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea  
22 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea  
23 Agreement by Defendant is discovered by the United States Attorney's Office.

24  
25 14. Post-Plea Conduct. Defendant understands that the terms of this Plea  
26 Agreement apply only to conduct that occurred prior to the execution of this Agreement.  
27 If, after the date of this Agreement, Defendant should engage in conduct that would  
28 warrant an increase in Defendant's adjusted offense level or justify an upward departure

1 under the Sentencing Guidelines (examples of which include, but are not limited to:  
2 obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
3 pending sentencing, and false statements to law enforcement agents, the probation officer  
4 or Court), the United States is free under this Agreement to seek a sentencing  
5 enhancement or upward departure based on that conduct.

6  
7 15. Completeness of Agreement. The United States and Defendant  
8 acknowledge that these terms constitute the entire Plea Agreement between the parties.  
9 This Agreement only binds the United States Attorney's Office for the Western District of  
10 Washington. It does not bind any other United States Attorney's Office or any other office  
11 or agency of the United States, or any state or local prosecutor.

12  
13  
14 DATED: This 29 day of July, 2004.

15  
16  
17   
18 JAMES ROBERT MURPHY  
Defendant

19  
20   
21 OMODARE JUPITER  
22 Attorney for Defendant

23   
24 KATHRYN A. WARMA  
25 Assistant United States Attorney

26   
27 FLOYD G. SHORT  
28 Assistant United States Attorney